

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD BACQUIE,

Plaintiff,

- against -

**DEFENDANT CITY OF NEW
YORK ANSWER TO CROSS
CLAIMS OF DEFENDANTS
ERNYEY AND MCCAFFREY**

16 Civ. 618 (DLC)

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, SERGEANT
WILLIAM TERGESEN, POLICE OFFICER
CHARLES LOVELOCK, POLICE OFFICER
RICHARD ERNYEY SHIELD # 6720, POLICE
OFFICER THOMAS MALONEY SHIELD #
31851, POLICE OFFICER JASON FIGARI,
POLICE OFFICER MICHAEL McCaffrey and
UNIDENTIFIED POLICE OFFICERS, all sued
herein in their official and individual capacities,

Defendants.

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Defendant City of New York by its attorney, Zachary W. Carter, Corporation
Counsel of the City of New York, as and for their answer to co-defendants Ernyey and McCaffrey's
cross-claims against the City of New York, which they pled in their answer to the complaint
(hereinafter "Ernyey and McCaffrey Answer"), respectfully alleges, upon information and belief, as
follows:

1. Denies the allegations set forth in paragraph "101" of the Ernyey and McCaffrey
Answer.

2. Denies the allegations set forth in paragraph "102" of the Ernyey and McCaffrey
Answer.

3. Denies the allegations set forth in paragraph “103” of the Ernyey and McCaffrey Answer.

4. Denies the allegations set forth in paragraph “104” of the Ernyey and McCaffrey Answer.

5. Denies the allegations set forth in paragraph “105” of the Ernyey and McCaffrey Answer.

6. Denies the allegations set forth in paragraph “106” of the Ernyey and McCaffrey Answer.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

7. The cross-claims fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

8. Defendant City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has the City of New York violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

9. At all times relevant to the incident, defendant City of New York acted reasonably in the proper and lawful exercise of its discretion.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

10. To the extent defendants Ernyey and McCaffrey assert state law claims against the City of New York, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

11. Defendant Ernyey and McCaffrey were determined to have been acting in violation of the rules and regulations of the New York City Police Department and/or outside the scope of their employment at the time of the incident giving rise to the instant case.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

12. Defendants Ernyey and McCaffrey's cross-claims against defendant City are not ripe for adjudication.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

13. This Court lacks jurisdiction over defendant Ernyey and McCaffrey's cross-claims.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

14. Any injury alleged to have been sustained by plaintiff was not the proximate result of conduct on the part of defendant City of New York and resulted, in whole or in part, from the culpable, negligent and/or intervening conduct of defendants Ernyey and/or McCaffrey.

AS AND FOR NINTH AFFIRMATIVE DEFENSE TO THE CROSS CLAIMS:

15. Defendants Ernyey and McCaffrey's cross claims may be barred in part by the doctrines of res judicata and/or collateral estoppel.

WHEREFORE, Defendant City of New York requests judgment dismissing the cross-claims of co-defendants Police Officers Ernyey and McCaffrey, and requests such other and further relief as the Court may deem just and proper.

DATED: New York, New York

August 1, 2017

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By: /s/

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Cc: (by ECF)

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